

§ 9701.502

Congress stressed that personnel systems established by the Department and OPM must be flexible and contemporary, enabling the Department to rapidly respond to threats to our Nation. The labor-management relations regulations in this subpart are designed to meet these compelling concerns and must be interpreted with the Department's mission foremost in mind. The regulations also recognize the rights of DHS employees to organize and bargain collectively, subject to any exclusion from coverage or limitation on negotiability established by law, including these regulations, applicable Executive orders, and any other legal authority.

§ 9701.502 Rule of construction.

In interpreting this subpart, the rule of construction in § 9701.106(a)(2) must be applied.

§ 9701.503 Waivers.

When a specified category of employees is covered by the labor-management relations system established under this subpart, the provisions of 5 U.S.C. 7101 through 7135 are waived with respect to that category of employees, except as otherwise specified in this part (including § 9701.106).

§ 9701.504 Definitions.

In this subpart:

Authority means the Federal Labor Relations Authority described in 5 U.S.C. 7104(a).

Collective bargaining means the performance of the mutual obligation of a management representative of the Department and an exclusive representative of employees in an appropriate unit in the Department to meet at reasonable times and to consult and bargain in a good faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

Collective bargaining agreement means an agreement entered into as a result

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of collective bargaining pursuant to the provisions of this subpart.

Component means any organizational subdivision of the Department.

Conditions of employment means personnel policies, practices, and matters affecting working conditions—whether established by rule, regulation, or otherwise—except that such term does not include policies, practices, and matters relating to—

(1) Political activities prohibited under 5 U.S.C. chapter 73, subchapter III;

(2) The classification of any position, including any classification determinations under subpart B of this part;

(3) The pay of any position, including any determinations regarding pay or adjustments thereto under subpart C of this part; or

(4) Any matters specifically provided for by Federal statute.

Confidential employee means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

Day means a calendar day.

Dues means dues, fees, and assessments.

Exclusive representative means any labor organization which is recognized as the exclusive representative of employees in an appropriate unit consistent with the Department's organizational structure, pursuant to 5 U.S.C. 7111 or as otherwise provided by § 9701.514.

Grievance means any complaint—

(1) By any employee concerning any matter relating to the conditions of employment of the employee;

(2) By any labor organization concerning any matter relating to the conditions of employment of any employee; or

(3) By any employee, labor organization, or the Department concerning—

(i) The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(ii) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation issued for the purpose of affecting conditions of employment.

HSLRB means the Homeland Security Labor Relations Board.

Labor organization means an organization composed in whole or in part of Federal employees, in which employees participate and pay dues, and which has as a purpose the dealing with the Department concerning grievances and conditions of employment, but does not include—

(1) An organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(2) An organization which advocates the overthrow of the constitutional form of government of the United States;

(3) An organization sponsored by the Department; or

(4) An organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike.

Management official means an individual employed by the Department in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the Department or who has the authority to recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment.

Professional employee has the meaning given that term in 5 U.S.C. 7103(a)(15).

Supervisor means an individual employed by the Department having authority in the interest of the Department to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

§ 9701.505 Coverage.

(a) *Employees covered.* This subpart applies to eligible DHS employees, subject to a determination by the Secretary or designee under § 9701.102(b), except as provided in paragraph (b) of this section. DHS employees who would otherwise be covered by 5 U.S.C. chapter 71 are eligible for coverage under this subpart. In addition, this subpart applies to an employee whose employment has ceased because of an unfair labor practice under § 9701.517 of this subpart and who has not obtained any other regular and substantially equivalent employment.

(b) *Employees excluded.* This subpart does not apply to—

(1) An alien or noncitizen of the United States who occupies a position outside the United States;

(2) A member of the uniformed services as defined in 5 U.S.C. 2101(3);

(3) A supervisor or a management official;

(4) Any person who participates in a strike in violation of 5 U.S.C. 7311;

(5) Employees of the United States Secret Service, including the United States Secret Service Uniformed Division;

(6) Employees of the Transportation Security Administration; or

(7) Any employee excluded pursuant to § 9701.514 or any other legal authority.

§ 9701.506 Impact on existing agreements.

(a) Any provision of a collective bargaining agreement that is inconsistent with this part and/or its implementing directives is unenforceable on the effective date of coverage under the applicable subpart or directive. In accordance with procedures and time limits established by the HSLRB under § 9701.509, an exclusive representative may appeal to the HSLRB the Department's determination that a provision is unenforceable. Provisions that are identified by the Department as unenforceable remain unenforceable unless held otherwise by the HSLRB on appeal. The Secretary or designee, in his or her sole and exclusive discretion, may continue all or part of a particular provision(s) with respect to a specific category or categories of employees